United Nations CRPD/C/19/2

Convention on the Rights of Persons with Disabilities

Distr.: General
16 April 2018

Original: English

Committee on the Rights of Persons with Disabilities

Report of the Committee on the Rights of Persons with Disabilities on its nineteenth session (14 February–9 March 2018)

I. States parties to the Convention and the Optional Protocol thereto

1. As at 9 March 2018, the date on which the nineteenth session closed, there were 176 States parties to the Convention on the Rights of Persons with Disabilities and 92 States parties to the Optional Protocol thereto. The lists of States parties to these instruments are available on the website of the Office of Legal Affairs of the Secretariat.

II. Opening of the nineteenth session of the Committee

2. The nineteenth session opened in a public meeting with welcoming remarks by the Chair of the Committee. The opening statement of the Office of the United Nations High Commissioner for Human Rights (OHCHR) was delivered by the Director of the Human Rights Council and Treaty Mechanisms Division and is available on the Committee's website. The Chair also delivered a statement and submitted a report on intersessional activities, also available on the Committee's website.

3. The Committee reviewed and adopted the provisional agenda and tentative programme of work for the nineteenth session (CRPD/C/19/1).

III. Membership of the Committee

4. The list of members of the Committee as at 9 March 2018, indicating the duration of their terms of office, is available on the Committee's website.

IV. Working methods

5. The Committee discussed various issues related to its working methods and adopted the decisions contained in annex I to the present report.

V. Activities related to general comments

6. The Committee considered the report of its working group on the right to equality and non-discrimination on progress in drafting a general comment on article 5 of the Convention. The Committee adopted in a public meeting its general comment No. 6 (2018)

GE.18-06018(E)

1806018

Please recycle

on equality and non-discrimination. The Committee endorsed a draft general comment on articles 4 (3) and 33 (3) of the Convention and decided to make a call for submissions to all interested stakeholders. The deadline is 15 May 2018.

VI. Activities related to the Optional Protocol

7. On 16 February, the Committee examined two communications. With regard to *Given v. Australia* (CRPD/C/19/D/19/2014), the Committee found that the failure to provide the author with access to an electronic voting platform already available in the State party, or to provide her with an alternative that would have enabled her to cast her vote without having to reveal her voting intention to another person, had resulted in a denial of her rights under article 29 (a) (i) and (ii), read alone and in conjunction with articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and 9 (1) and (2) (g) and of the Convention. In *Bacher v. Austria* (CRPD/C/19/D/26/2014), the Committee concluded that the multidimensional consequences of the decisions adopted by the State party's authorities on the accessibility rights of the author had been ignored, leaving to his family the responsibility of finding ways to enable his access to his home and to the external public services that he needed for his daily life, in violation of article 9, read alone and in conjunction with article 3 of the Convention.

8. On 8 March, the Committee adopted the report of the rapporteur on follow-up to Views. The Committee decided to maintain the follow-up procedure ongoing on all of them and to send follow-up letters to the State parties concerned with a view to providing guidance on the Committee's expectations in terms of the implementation of its recommendations. The Committee also adopted the report of the Special Rapporteur on new communications on the complaints received since the eighteenth session and the status of registered communications.

9. The Committee considered matters related to inquiry proceedings pursuant to articles 6 and 7 of the Optional Protocol.

VII. Other decisions

10. The Committee adopted the present report on its nineteenth session.

11. The full list of the decisions adopted by the Committee is available in annex I to the present report.

VIII. Future sessions

12. The twentieth session of the Committee is scheduled to be held from 27 August to 21 September 2018 and will be followed by the tenth meeting of the pre-sessional working group, from 24 to 28 September 2018.

IX. Accessibility of the Committee's meetings

13. Remote captioning was provided by the United Nations in all official public and in four private meetings. International Sign interpretation was provided during public meetings. National sign language interpretation was provided during the dialogues with three States parties to the Convention. Russian Sign Language interpretation was provided in all public and private meetings. Webcasting was provided during public meetings.

X. Cooperation with relevant bodies

A. Cooperation with United Nations organs and specialized agencies

14. At the opening meeting of the session, representatives of the following United Nations agencies, departments and programmes made statements: OHCHR, the United Nations Children's Fund, the World Health Organization and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). The Committee also met with the Chair of the Committee on Victim Assistance of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. The Committee heard updates of the activities of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Independent Expert on the enjoyment of all human rights by older persons; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

15. The Bureau of the Committee met with the Special Rapporteur on the rights of persons with disabilities to discuss matters relating to coordination of the mandate of the Special Rapporteur with that of the Committee.

16. The Chair of the Committee participated in the annual interactive debate on the rights of persons with disabilities organized by the Human Rights Council on the theme of such persons' right of access to justice. She also participated at a side event on the realization of the rights of all migrant women through the global compact on migration, organized by OHCHR, UN-Women and the Global Alliance of National Human Rights Institutions, and at a side event organized by the Permanent Mission of Kazakhstan to the United Nations Office and other international organizations in Geneva on monitoring activities at the national level. A written statement by the Chair on the 70th Anniversary of the Universal Declaration of Human Rights and the 25th Anniversary of the Vienna Declaration and Programme of Action was submitted to the Human Rights Council.

B. Cooperation with non-governmental organizations and other bodies

17. The Committee was addressed by representatives of the International Disability Alliance, the European Network of Users and Survivors of Psychiatry, the Centre for Human Rights of Users and Survivors of Psychiatry, the Leprosy Mission, the Global Initiative for Inclusive Information and Communication Technologies, Plan International, Child Rights Connect and organizations of persons with disabilities from the countries considered by the Committee during the session.

18. The Committee held a first interactive annual debate with national human rights institutions, which focused on sharing their practices in monitoring article 19 of the Convention and on the participation of persons with disabilities in monitoring activities at the national level.

19. A thematic side event on standards in implementing sexual and reproductive health and the rights of women and girls with disabilities was organized by Creating Resources for Empowerment in Action, Women Enabled International, International Disability Alliance and the Centre for Reproductive Rights.

XI. Consideration of reports submitted in accordance with article 35 of the Convention

20. The Committee considered the initial reports of Haiti (CRPD/C/HTI/1), Nepal (CRPD/C/NPL/1), Oman (CRPD/C/OMN/1), the Russian Federation (CRPD/C/RUS/1), Seychelles (CRPD/C/SYC/1), Slovenia (CRPD/C/SVN/1) and the Sudan (CRPD/C/SDN/1). The Committee adopted concluding observations on those reports, which are available from its website.

21. The Committee adopted lists of issues under the simplified reporting procedure regarding Costa Rica (CRPD/C/CRI/QPR/2-3), New Zealand (CRPD/C/NZL/QPR/2-3), Paraguay (CRPD/C/PRY/QPR/2-3) and the Republic of Korea (CRPD/C/KOR/QPR/2-3).

XII. Conference of States Parties to the Convention

22. The Committee confirmed that it would be represented at the eleventh session of the Conference of States Parties to the Convention by its Chair and one Vice-Chair.

Annex I

Decisions adopted by the Committee at its nineteenth session

1. The Committee adopted concluding observations in relation to the initial reports of the following countries: Haiti (CRPD/C/HTI/1), Nepal (CRPD/C/NPL/1), Oman (CRPD/C/OMN/1), Russian Federation (CRPD/C/RUS/1), Seychelles (CRPD/C/SYC/1), Slovenia (CRPD/C/SVN/1) and Sudan (CRPD/C/SDN/1).

2. The Committee adopted lists of issues under the simplified reporting procedure in relation to the following countries: Costa Rica (CRPD/C/CRI/QPR/2-3), New Zealand (CRPD/C/NZL/QPR/2-3), Paraguay (CRPD/C/PRY/QPR/2-3) and Republic of Korea (CRPD/C/KOR/QPR/2-3).

3. The Committee considered matters related to its communication and inquiry procedures pursuant to articles 6 and 7 of the Optional Protocol. The Committee considered two communications. It found violations in both of them. A summary of the Views of the Committee can be found in annex II to the present report.

4. The Committee adopted its general comment No. 6 (2018) on equality and non-discrimination.

5. The Committee endorsed a draft general comment on articles 4 (3) and 33 (3) and decided to make a call for submissions to all interested stakeholders. The deadline for submissions is 15 May 2018.

6. With regard to countries to be considered at its twentieth session and country rapporteurs, the Committee decided to consider the following countries: Algeria (Coomara Pyaneandee), Bulgaria (Danjan Tatic), Malta (Coomara Pyaneandee), Philippines (Hyum-Shik Kim), Poland (Jonas Ruskus), South Africa (Danlami Basharu) and the former Yugoslav Republic of Macedonia (Martin Babu). The Committee also decided to adopt lists of issues under its simplified reporting procedure regarding Austria, Azerbaijan, Germany, Mongolia and Sweden. It also decided to adopt a list of issues regarding Iraq. The Committee instructed its Secretariat to inform all concerned permanent missions of those countries.

7. The Committee decided that its twentieth session would be held from 27 August to 21 September 2018 and would be followed by the tenth meeting of the pre-sessional working group, from 24 to 28 September 2018. During the latter, the Committee requested its working group to adopt lists of issues in respect of the Niger, Norway, Rwanda, Saudi Arabia, Senegal, Turkey and Vanuatu. The Committee instructed its Secretariat to inform the countries concerned.

8. The Committee adopted a statement on the new urban agenda and a statement on the international day of sign languages.

9. The Committee decided to amend its working methods to clarify further the matter of confidentiality for third parties invited to participate in private meetings.

10. The Committee adopted a report on follow-up activities in relation to concluding observations. It decided to put these activities on hold and to identify priority recommendations to be implemented by States parties in its concluding observations. It also adopted a follow-up report on Views on communications.

11. The Committee welcomed the initiative taken by the United Nations Office at Geneva to produce core documents of the Committee in plain English. It decided to request the Secretariat to validate further these documents with persons with intellectual disabilities with a view to posting them on the Committee's website.

12. The Committee considered matters related to its working methods and in particular the effective use of meeting time during dialogue with States parties. It decided to request its working group on working methods to continue to be seized of the matter during the intersessional period and to submit proposals to the Plenary at the twentieth session.

13. The Committee and the Global Alliance of National Human Rights Institutions adopted a joint statement on monitoring article 19 at the national level.

14. The Committee adopted the present report on its nineteenth session.

Annex II

Summary of the Views adopted by the Committee regarding communications submitted under the Optional Protocol

1. The Committee examined the communication in the case of *Given v. Australia*. The author had claimed to be a victim of violations by the State party of article 29 (a) (i)–(iii), read alone and in conjunction with articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and (3) and 9 of the Convention. The author had cerebral palsy and, as a result, she had limited muscle control and dexterity and no speech. She used an electric wheelchair for mobility and an electronic synthetic speech-generating device for communication. On 7 September 2013, federal elections had been held in the states and territories for the House of Representatives and for the Senate. At the time of the elections, the author had wanted to vote by secret ballot on an equal basis with other electors. However, she had been unable to mark a ballot paper and fold and deposit it in a ballot box without live assistance. She had argued that, in order to be able to cast an independent and secret ballot, she would have required access to an electronic voting system, such as a computer-generated interface. However, pursuant to the Electoral Act, electronically assisted voting had only been made available to persons with visual impairments registered as such. The author had claimed that the State party had violated her rights, as it had denied her the rights to accessible voting procedures and facilities and to vote by secret ballot utilizing assistive technology. The author had argued that there existed a well-tested and well-functioning electronic voting system that had been in operation in the State of New South Wales since 2011, which had allowed her to cast an independent vote by secret ballot in state elections. She had argued that the real barrier to the use of an electronic voting system in federal elections had been the State party's refusal to amend the Electoral Act to permit its generalized use. The Committee noted the State party's submission that persons with disabilities had access to a range of accessible and appropriate voting options under the Electoral Act in the State party, and that the author had had the option of voting in a number of different ways, including with live assistance at fully accessible polling places. The Committee further noted the State party's submission that the requirement to facilitate the use of assistive technology had been a general or aspirational obligation required of States parties, which needed to be fulfilled only in cases in which it was appropriate, and that it was up to the State party to decide how to allocate limited resources. The Committee recalled that the obligation to implement accessibility was unconditional. It further noted that an electronic voting option that enabled the author to cast an independent and secret vote in the manner of her choice had been used in New South Wales state elections since 2011. It also noted that the State party had not provided any information that could justify the claim that the use of such an electronic voting option would have constituted a disproportionate burden so as to prevent its use in the 2013 federal election for the author and for all persons requiring such accommodation. The Committee therefore found that the failure to provide the author with access to an electronic voting platform already available in the State party, or to provide her with an alternative that would have enabled her to cast her vote without having to reveal her voting intention to another person, had resulted in a denial of her rights under article 29 (a) (i) and (ii), read alone and in conjunction with articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and 9 (1) and (2) (g) of the Convention.

2. The Committee examined the communication in the case of *Bacher v. Austria* (CRPD/C/19/D/26/2014). Simon Bacher had been born with Down's syndrome, he was on the autism spectrum and occasionally needed a wheelchair. He also had a chronic pulmonary condition and immunodeficiency that required regular medical assistance. Mr. Bacher lived in the town of Vomp, in a house that his family had bought in 1983. The house, and the two neighbouring houses, were only accessible by a footpath, which had an 18 per cent gradient. When it rained, snowed or hailed, the path became particularly dangerous for Mr. Bacher and the persons who helped him. As he grew, his parents had become unable to carry him and had decided to build a roof over the path to protect it from bad weather. Planning permission had been granted, with the agreement of the immediate neighbours. However, the owners of one of the neighbouring houses had not been invited to

attend the meeting to discuss the planning permission, as by law only those neighbours living within 15 metres of the place of the construction needed to be consulted. In compliance with the licence granted by the Vomp municipality, and with a grant from the Tyrol local government, a roof had been built between November and December 2001. Those neighbours had sued the author's parents before the Schwaz District Court, claiming that the roof had reduced the width of the path and that its height had violated their right of way. In July 2002, the Court had decided in favour of the neighbours and had ordered the roof to be demolished. The case had become the object of media attention. The Bacher family and their neighbours had entered into a long legal process to establish the legal responsibility of each of the property owners to maintain the path. Between 2011 and 2012, the Disability Ombudsman had attempted to mediate with the Mayor of Vomp, who had suggested that Mr. Bacher should be placed in a home or that the whole family should move away. In February 2012, the Schwaz District Court had again ruled against the Bacher family on the grounds that the neighbours barely used the path and were therefore not responsible for its maintenance. Mr. Bacher's family had not appealed against that decision because they had been told by all the lawyers that they had consulted that no further remedy was available. The author had claimed that the State party's decisions had amounted to a violation of Mr. Bacher's rights under articles 12, 13 and 22 of the Convention. In its decision finding violations of the Convention, the Committee noted the State party's submission that the complaint should have been held inadmissible because the facts referred to had occurred before the entry into force of the Optional Protocol in the State party, and because the author had not exhausted all domestic remedies. However, the Committee considered that some of the facts submitted to it had taken place after the entry into force of the Convention and the Optional Protocol for the State party; that the appeal referred to by the State party had constituted an extraordinary remedy that did not have to be exhausted for the purposes of admissibility; and that the other remedies referred to were not applicable in the case of the author. The Committee therefore declared the communication admissible, insofar as it raised issues under article 9, read alone and in conjunction with article 3 of the Convention. As to the merits, the Committee noted the argument of the State party that the right of way granted to the neighbours of the Bacher family had given rise to a dispute between individuals, which had not been directly initiated by the authorities. It also noted the State party's argument that the obligations of the State party extended only to private legal relationships in which entities offered facilities and services that were available or offered to the public, and did not extend to "purely private matters". However, the Committee recalled that that type of dispute was governed by the legal order of the State party, which, in any event, bore the ultimate responsibility to ensure that the rights under the Convention were respected, including the right for a person with disabilities to have access to his or her home, but also to have access to community life and to public services, such as education and health. Accordingly, although disputes resulting from the construction of a roof on a path were between two individuals, the State party had an obligation, inter alia, to guarantee that the decisions adopted by its authorities did not infringe upon the rights of the Convention. The Committee further recalled that accessibility was a precondition for persons with disabilities to live independently and participate fully and equally in society. In compliance with article 9, States parties should take appropriate measures to ensure that persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation and to other facilities and services open or provided to the public, both in urban and in rural areas. Those measures should include the identification and elimination of obstacles and barriers to accessibility. In that context, the focus was no longer on legal personality and the public or private nature of those who own buildings, transport infrastructure, vehicles, information and communication and services. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. The Committee noted that, by its decision dated 9 February 2012, the Schwaz District Court had adopted the same line as the previous decisions of the courts of the State party in the present case: it had not made a thorough analysis of the special needs of Mr. Bacher, despite the fact that they had been clearly referred to by his parents, as in all previous court hearings and summons. The multidimensional consequences of the decisions adopted by the State party's authorities on the accessibility rights of Mr. Bacher had therefore been ignored, leaving to his family the

responsibility of finding ways to enable his access to his home and to the external public services that he needed for his daily life. The Committee therefore considered that the decision of the Schwaz Court of 9 February 2012, read in the context of the previous judicial decisions adopted by the courts of the State party in the case, constituted a denial of justice for Mr. Bacher, in violation of article 9, read alone and in conjunction with article 3 of the Convention.

United Nations CRPD/C/19/3

Convention on the Rights of Persons with Disabilities

Distr.: General
19 April 2018

Original: English

Committee on the Rights of Persons with Disabilities

Follow-up to concluding observations on State party reports*

I. Introduction

1. The present report contains a summary of the activities of the Committee in relation to the procedure for follow-up to recommendations contained in concluding observations.

2. The procedure mirrors similar procedures adopted across human rights treaty bodies to track the implementation of recommendations considered for priority implementation by States parties.

II. Follow-up activities according to the Convention and the Committee's working methods

3. Under article 35 (2) of the Convention, the Committee is allowed to request States parties to submit reports whenever the Committee deems appropriate.

4. Paragraphs 19–22 of the working methods of the Committee (CRPD/C/5/4) provide that States parties will be requested to focus in a detailed manner on topics of concerns identified by the Committee in its concluding observations. The Committee may appoint one of its members to serve as rapporteur on follow-up to the concluding observations, and States parties will be afforded up to 12 months from the date of notification to provide the information requested.

A. Establishment of the procedure for follow-up

5. In April 2012, at its seventh session, the Committee adopted its procedure for follow-up to concluding observations and appointed a rapporteur on follow-up to concluding observations, mandated to prepare guidelines on the procedure. In April 2017, at its seventeenth session, the Committee appointed a new rapporteur.

B. Guidelines on the procedure for follow-up

6. In April 2014, the rapporteur on follow-up proposed specific guidelines on the procedure for follow-up. In September 2014, at its twelfth session, the Committee adopted the guidelines and included them in the report of that session (CRPD/C/12/2, annex II).

7. The guidelines address the role of the country rapporteur vis-à-vis the rapporteur on follow-up, set out the criteria for identifying recommendations for follow-up and describe

* Adopted by the Committee at its nineteenth session (14 February–9 March 2018).

GE.18-06286(E)

1806286

Please recycle

the criteria for assessing the replies of States parties. The Committee may consider the replies "satisfactory", "partially satisfactory" or "unsatisfactory".

C. Implementation of the procedure for follow-up

1. Timing

8. The meeting time, budgetary resources and staffing allocated by the General Assembly to the Committee have been used by the Committee primarily to consider reports submitted by States parties as well as communications submitted by individuals or groups of persons alleging that their rights under the Convention have been violated by a State party. In order to address those priorities, the Committee has only dealt with follow-up activities on two occasions: in April 2015, at its thirteenth session, the Committee considered in a private meeting the replies submitted by certain States parties in follow-up to concluding observations; and, in February 2018, at its nineteenth session, it considered the present report on follow-up to concluding observations.

9. In spite of the efforts by the Committee, the backlog of initial reports pending consideration has not been reduced significantly, mainly as a result of the increase in the number of ratifications of the Convention and its Optional Protocol and the number of reports submitted per year. The Committee therefore foresees that, in the future, the time allocated to consider the activities of States parties in follow-up to concluding observations will continue to be scarce.

2. Countries and recommendations identified for follow-up

10. As at December 2017, the Committee had considered 60 initial reports of States parties and 1 initial report of a regional integration organization. The Committee had identified recommendations for follow-up in 50 out of 61 (81 per cent) of the concluding observations adopted in relation to initial reports.

11. The number of recommendations identified for follow-up increased from 7 by 2012 to 94 by 2017.

12. As at December 2017, 38 replies had been submitted of the 67 that had been due, which represents a rather modest 56 per cent compliance rate.

3. Feedback on follow-up provided by stakeholders other than States parties to the Convention

13. The Committee has received very few contributions from other stakeholders, such as organizations of persons with disabilities or national human rights institutions, in relation to the follow-up procedure. Only four written contributions in relation to four different countries have been submitted by such stakeholders.

4. Subject matter of recommendations identified for follow-up

14. The majority (54 per cent) of the 94 recommendations identified for follow-up have been in relation to the following specific provisions of the Convention: 17 (or 17.7 per cent) relate to respect for the physical and psychological integrity of persons with disabilities (arts. 15–17); 13 (or 13.5 per cent) relate to the monitoring and implementation of the Convention (art. 33); 9 (or 9.3 per cent) relate to the implementation of general provisions (arts. 1–4); 7 (or 7.2 per cent) relate to the right to equality and non-discrimination (art. 5); and 5 (or 5.3 per cent) relate to the right to equal recognition before the law (art. 12).

15. Recommendations relating to other provisions of the Convention make up the other 46 per cent. No recommendation for follow-up has been identified in connection with articles 8 (awareness-raising), 20 (personal mobility), 22 (right to privacy), 23 (respect for home and the family), 25 (health), 26 (habilitation and rehabilitation) or 32 (international cooperation).

5. Assessment of replies

16. Of the 38 replies received, 28 (or 74 per cent) could be considered satisfactory or partially satisfactory, in the sense that the States parties appeared to have taken steps to move towards the implementation of the recommendations. Measures included the adoption, repeal or amendment of legislation; changes in policy; or the set-up of bodies or commissions to address the issues raised by the Committee.

17. The other 10 replies (or 26 per cent) could be considered unsatisfactory, in the sense that either no measure had been adopted to address the concerns raised by the Committee or the measures adopted were not in line with the recommended course of action indicated by the Committee.

18. It is noteworthy to mention that replies relating to the implementation of recommendations concerning articles 12 and 33 were prevalent among the unsatisfactory replies. This could be indicative of the ongoing challenges experienced by States parties in moving expeditiously from systems of substituted decision-making to supported decision-making regimes. Similarly, the results demonstrated a persistent misunderstanding among parties to the Convention in relation to the requirement of establishing independent monitoring frameworks, as entities or departments that are part of the executive branch of the Government continue to be included as constituencies in the monitoring framework.

6. Outcome of the assessment of 38 replies to recommendations identified for follow-up

19. No action within the follow-up procedure is envisaged regarding 11 recommendations concerning six countries for which the Committee has already adopted or is about to adopt list of issues under the simplified reporting procedure.

20. Similarly, for 11 replies considered satisfactory, no further action is envisaged.

21. Regarding seven replies considered partially satisfactory, the Committee encouraged the States parties concerned to move forward in adopting appropriate measures to implement its recommendations and to associate persons with disabilities through their representative organizations in that endeavour.

22. Regarding nine replies considered unsatisfactory, the Committee further encouraged the States parties concerned to review their legislation, policies and practices to bring them into compliance with the Convention and to consider the possibility of requesting the Committee's technical assistance, pursuant to article 37 (2) of the Convention.

23. Regarding non-responding States parties, the Committee encouraged them to continue to address its recommendations and to adopt all measures necessary to ensure the implementation of the recommendations. The Committee will address matters identified for follow-up in the next reporting round of the States parties.

24. A note summarizing the information contained in the replies of the States parties and the assessment made by the Committee is available in English on the Committee's web page.

D. Harmonization of working methods regarding follow-up procedures

25. The Committee expresses its appreciation for the above-mentioned note on follow-up to concluding observations prepared by the rapporteur on follow-up, encourages him to continue to assist the Committee in the task of interacting with States parties and other stakeholders in follow-up activities, and also encourages him to take into account the working methods of other human rights treaty bodies with a view to achieving a broader harmonization of working methods across the treaty bodies with respect to follow-up procedures.

III. Next report on follow-up to concluding observations

26. The Committee, during its nineteenth session (14 February–9 March 2018), decided to put on hold the follow-up procedure to concluding observations in view of the insufficient staffing resources in the Secretariat to support the Committee. With regard to follow-up replies of States parties that became due in 2017 or are expected to become due in 2018, the Committee encourages the rapporteur on follow-up to submit a second report on follow-up to concluding observations by no later than the twenty-sixth session of the Committee, or in the second half of 2021.

IV. Reference to the present report in the Committee's biennial report to the General Assembly and the Economic and Social Council

27. The forthcoming biennial report of the Committee, due in early 2019, shall include a reference to the present report.

United Nations CRPD/C/19/4

Convention on the Rights of Persons with Disabilities

Distr.: General
6 April 2018

Original: English

Committee on the Rights of Persons with Disabilities

Follow-up progress report on individual communications, adopted by the Committee at its nineteenth session (14 February–9 March 2018)

A. Introduction

1. The present report was prepared pursuant to article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which states that the Committee shall hold closed meetings when examining communications under the Protocol and, after examining a communication, shall forward its suggestions and recommendations, if any, to the State party concerned and to the petitioner. The report is also prepared in line with rule 75, paragraph 7, of the rules of procedure of the Committee, which stipulates that the Special Rapporteur or working group shall report regularly to the Committee on follow-up activities, to ascertain the measures to be taken by States parties to give effect to the Committee's Views.

2. The present report sets out the information received by the Special Rapporteur for follow-up on Views between the seventeenth and nineteenth sessions pursuant to the Committee's rules of procedure, and the analyses and decisions adopted by the Committee during its nineteenth session. The assessment criteria were as follows:

Assessment criteria	
Action satisfactory	
A	Measures taken largely satisfactory
Action partially satisfactory	
B1	Substantive action taken, but additional information required
B2	Initial action taken, but additional action and information required
Action not satisfactory	
C1	Reply received but actions taken do not implement the Views/recommendations
C2	Reply received but not relevant to the Views/recommendations
No cooperation with the Committee	
D1	No reply to one or more recommendations or parts of recommendations
D2	No reply received following reminder(s)

GE.18-05433(E)
1805433

Please recycle

Assessment criteria	
Measures taken are contrary to the recommendations of the Committee	
E	The reply indicates that the measures taken go against the Views/recommendations of the Committee

B. Communications

1. Communication No. 8/2012, *X v. Argentina*

Views:	11 April 2014
Author's comments (first and second sets):	16 June and 17 November 2014. Transmitted to State party for comment.
Decision of the Committee:	At its fourteenth session, the Committee decided to discontinue the follow-up procedure with an "A" assessment of the measures taken by the State party (see CRPD/C/14/3).
Additional information from the State party:	On 19 July 2017, the State party submitted that, on 22 June 2017, the Court (Tribunal Oral Federal de San Martín) had granted domiciliary detention to Mr. X and ordered that the decision be communicated to the Committee.
Decision:	A letter of acknowledgement will be sent to the State party, taking note of the initiative of the Court and reiterating that the follow-up procedure is closed.

2. Communication No. 7/2012, *Noble v. Australia*

Views:	2 September 2016
First reply from the State party:	Due on 13 March 2017. Received on 15 June 2017.

The State party submitted that it had given due consideration to the Views, which it had published on the website of the Australian Attorney-General's Department, in compliance with the Committee's recommendations.

It acknowledged its obligations under the Convention and expressed its commitment to provide persons with disabilities with adequate support and reasonable accommodations to enable them to exercise their legal capacity before the courts.

The Western Australian Government acknowledged that there had been significant failures in the way the author had been dealt with and with the operation of the Criminal Law (Mentally Impaired Accused) Act 1996 (WA) more generally. The Western Australian Government deeply regretted the period of time during which the author had been detained under the provisions of the Act and was committed to continuing to provide the author with support, with a view to him living independently in the community.

The Western Australian Government had already undertaken a review of the Act and would be seeking to implement legislative changes to bring about a fairer and more just system for dealing with persons with mental and intellectual impairment who were accused of a criminal act.

However, the State party submitted that it disagreed with the Committee's Views on admissibility in respect of articles 12, 13 and 15, and reiterated the position expressed in its observations in that regard.

As regards the author's allegations under articles 5 (1) and (2) of the Convention, the State party reiterated the arguments developed in its observations and submitted that the Act: (a) constituted legitimate differential treatment; (b) did not differentiate on the basis of

2. Communication No. 7/2012, *Noble v. Australia*

disability but on the basis of mental capacity; (c) preserved the fair trial rights of Western Australian persons with mental impairments; and (d) was a form of reasonable accommodation. It argued that the Act was designed to ensure that persons with mental incapacity were not subjected to a criminal trial that they could not understand or in which they could not effectively participate. It differentiated between persons fit to stand trial and those unfit to stand trial, on the basis of reasonable and objective criteria, not on the basis of disability. It considered that the Act provided sufficient safeguards and that the legislation guaranteed that individuals who did not understand the nature of the charges against them would not be tried in order to ensure that persons who did not have the capacity or ability to appropriately defend themselves were not found guilty as a result.

The State party further submitted that the Committee had not specified the types of measures that it considered a State party should provide to a person who did not have, either temporarily or permanently, the capacity to understand the nature of a criminal trial. It argued that the Committee should provide guidance on the types of measures that the State could have implemented to further or better assist an author to exercise his or her legal capacity consistently with article 5 of the Convention. The State party also reiterated its long-standing concerns about the definitive approach to capacity taken by the Committee, which it considered failed to recognize that capacity — as opposed to the right to recognition before the law — was a spectrum.

The State party referred to the jurisprudence of the Human Rights Committee, according to which it is for the courts of States parties concerned to review the evaluation of the facts as well as the application of the law in a particular case, and not for the Committee, unless the Courts' decisions are manifestly arbitrary or amount to a denial of justice.[1] It submitted that the Committee should align its views with those of the Human Rights Committee. In that connection, it specified that the Human Rights Committee had found that detention under mental health legislation from 1984 to 1993 had not been a violation of the author's right under article 9 of the International Covenant on Civil and Political Rights. It came to that conclusion by noting that the author had been assessed under domestic legislation according to objective criteria. Furthermore, the Committee noted that the author's committal order had been issued according to law, based on an opinion of three psychiatrists. The periodic review of the author's situation by psychiatrists and the courts had also been a relevant factor in the Committee's finding in that case that the State party had not violated article 9.

The State party reiterated that the decisions of its authorities with respect to the author's detention under legislation had not been arbitrary, had been made according to law and had been reviewed periodically, and submitted that the author's detention would not have been found to be a violation of article 14 (1) (b) of the Convention following the Human Rights Committee's reasoning. As regards the Committee's finding of a violation of article 15, it reiterated that it considered that the author's allegations in that regard had not been substantiated.

The State party therefore submitted that it did not consider appropriate to implement all of the Committee's recommendations. Nevertheless, the Government of Western Australia was committed to providing the author with support through the various agencies overseeing his case with a view to helping him to live independently in the community, and would give due consideration, on its merits, to any further request for assistance by the author.

In respect of the Committee's recommendation as to reimbursement of legal costs, the State party submitted that the author had received legal aid assistance for proceedings in domestic courts and that it was unaware of any legal costs borne by the author.

Action taken:	Transmitted to the authors on 15 June 2017, with a deadline for comments of 12 September 2017.
Author's comments:	On 19 July 2017, the author submitted that he did not wish to provide further comments and relied on previous submissions.

[1] See *A. v New Zealand* (CCPR/C/66/D/754/1997), para. 7.3.

2. Communication No. 7/2012, *Noble v. Australia*

Decision:	A follow-up letter will be sent to the State party taking note with satisfaction of its commitment to support the author and reiterating the Committee's position as expressed in its Views, and recalling the Committee's general comment No. 1 (2014) on equal recognition before the law. The Committee will also request the State party to specify which measures of support have been adopted for the author with a view to enable him to live independently in the community, and to provide him with adequate compensation measures.

3. Communication No. 1/2010, *Nyusti and Takács v. Hungary*

Views adopted:	16 April 2013
First reply from the State party:	Due on 24 October 2013. Received on 13 December 2013. Analysed at the eleventh session (see CRPD/C/11/5).
Authors' comments (first set):	13 March 2014. Analysed at the eleventh session (see CRPD/C/11/5).
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3), with a deadline for comments of 7 November 2014.
Second reply from the State party:	Received on 29 June 2015 and 27 May 2016. Analysed at the sixteenth session (see CRPD/C/16/3).
Decision adopted at the sixteenth session:	Follow-up ongoing.
Actions taken:	On 6 June 2016, the Special Rapporteur for follow-up on Views sent a letter to the State party: (a) welcoming the compensation that had been paid to the author; and (b) requesting updated information on the implementation of Committee's Views, the implementation of the four-year development programme for automatic teller machines and the outcome of the consultations initiated by the State party. Deadline for response: 2 August 2016
Third reply from the State party:	Received on 3 August 2016.
Actions taken:	16 August 2016: acknowledgement of follow-up information sent to the State party. Transmittal to the author for comments. Deadline for response: 17 October 2016. 27 March 2017: first reminder sent to the author. Deadline for response: 26 May 2017. 19 January 2018: second reminder sent to the author. Deadline for response: 19 March 2018.
Decision:	Follow-up ongoing. A third reminder will be sent to the author if no reply is received. Follow-up actions to be determined at the next session in view of the author's comments.

4. Communication No. 4/2011, *Bujdosó et al. v. Hungary*

Views adopted:	9 September 2013
First reply from the State party:	26 March 2014 (see CRPD/C/12/3)
Authors' comments (first and second sets):	5 May 2014 (see CRPD/C/12/3)
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3). Deadline for comments: 7 November 2014.
Second reply from the State party:	8 July 2014 (see CRPD/C/12/3)
Authors' comments (third set):	25 August 2015
Third reply from the State party:	29 June 2015 (see CRPD/C/15/3)

Decision adopted at the fifteenth session:

Follow-up ongoing. Follow-up letter to the State party on 14 June 2016 (see CRPD/C/15/3), with a deadline for comments of 9 August 2016.

Fourth reply from the State party:	Received on 12 August 2016 (see CRPD/C/16/3)
Authors' comments (fourth set):	17 August 2016 (see CRPD/C/16/3)
Action taken:	Follow-up letter sent to the State party on 18 November 2016 (see CRPD/C/17).
Fifth reply from the State party:	Received on 17 January 2017 (see CRPD/C/17/3).
Authors' comments (fifth set):	Date received: 10 March 2017 (see CRPD/C/17/3).
Closed meeting of the Rapporteur with the State party:	6 April 2017.
Decision adopted at the seventeenth session:	"D1" assessment: follow-up ongoing.
Action taken:	Follow-up letter sent by the Rapporteur to the State party on 23 November 2017: The Committee requested the State party to provide information about the measures taken to ensure that legislation on supported decision-making and the right to vote complied fully with the Convention and the Committee's Views. As regards the payment of compensation to the authors of the complaint, the Committee welcomed the payment of the legal costs related to the procedures carried out by the authors of the communication. Nonetheless, it reiterated its concern that the payment of the rest of the compensation awarded by the government decree in June 2015 still had not been paid, as at April 2017. The Committee expressed its concern that, according to the provided information, the Ministry of Human Capacities had decided that it would recognize the legal representatives of the authors only for the procedure before the Committee, but that the authors had to be

4. Communication No. 4/2011, *Bujdosó et al. v. Hungary*

	represented by their legal guardians for all the procedures before national authorities. The Committee therefore reiterated its request that the State party provide information on the progress made in the payment of the compensation determined in June 2015, and on the measures taken to ensure that the compensation paid could be managed by the authors in compliance with their own will and decisions. Deadline for response: 23 January 2018.
Decision:	A reminder will be sent to the State party, Follow-up action to be determined at the next session in view of the State party's reply and of the author's comments.

5. Communication No. 21/2014, *F. v. Austria*

Views adopted:	21 August 2015
Deadline for first reply from the State party:	9 March 2016
First reply from the State party:	Received on 24 February 2016 (see CRPD/C/16/3)
Author's comments (first set):	Received on 22 June 2016 (see CRPD/C/16/3)
Action taken:	On 5 December 2016, the Special Rapporteur sent a follow-up letter to the State party (see CRPD/C/17/3).
Second reply from the State party:	Received on 24 January 2017 (see CRPD/C/17/3).
Action taken:	State party's follow-up observations transmitted to the author for comments with a deadline of 13 April 2017.
Author's comments (second set):	Received on 27 January 2017 (see CRPD/C/17/3).
Decision adopted:	Follow-up ongoing with a "B2" assessment, and a follow-up letter to be sent by the Rapporteur.

Action taken:

On 21 November 2017, a follow-up letter was sent to the State party.

The Committee took note of the collaboration of the State party and of the steps taken to implement the Committee's Views.

It welcomed that the State party published its Views in German on the websites of the Federal Chancellery and the Federal Ministry of Labour, Social Affairs and Consumer Protection in a format that was accessible to blind and partially sighted persons. It also welcomed that the websites were linked to the website of the Office of the United Nations High Commissioner for Human Rights, where the Views were published.

However, it considered that the follow-up dialogue should be maintained on the points below.

The Committee noted that, as a matter of principle, the State party considered that no compensation could be paid to the author of the complaint for the legal costs incurred as the State party did not provide compensation to an applicant in treaty body procedures for costs incurred in the filing of communications, and that the State party could therefore not

5. Communication No. 21/2014, *F. v. Austria*

comply with that recommendation

The Committee expressed its regret in that regard and referred to article 26 of the Vienna Convention on the Law of Treaties in that the duty to cooperate with the Committee arises from an application of the principle of good faith in the observance of all treaty obligations. It also recalled that the same principle applied to all the Committee's recommendations, including with regard to remedies.

As to the measures taken to remedy the lack of accessibility to the information visually available for persons with visual impairment for all lines of the tram network, the Committee noted with satisfaction the commitment of the Linz Linien GmbH to continue its ongoing efforts to further improve accessibility for persons with disabilities. It also noted that all ticketing machines of the Linz Linien GmbH were being equipped with "text to speak" functions, and that the smartphone application "Qando", which provided information on Austrian public transport schedules, had been optimized for the use of blind and partially sighted persons. The Committee further noted with satisfaction that the Linz Linien GmbH was the first public transport company in Austria which allowed persons with disabilities to be accompanied by another person free of charge. However, the Committee highlighted the importance that the measures taken should also aim at enabling blind and partially sighted persons who were not accompanied to use the transport.

As to the measures taken to guarantee that Austrian transport networks built in the future complied with the principle of universal design, the Committee took note that the regulation of the Federal Minister competent for public transport regarding the building and operation of tramways, federal Law Gazette II 76/2000, was under revision. However, the Committee expressed its concern that, according to the information available, article 5 (a) of the draft foresaw that "persons with a limited mobility should have access without any particular obstacles", but did not make reference to persons with any other kind of disability, including blind persons, or persons with sensory impairment.

In view thereof, the Committee requested the State party to provide additional information with regard to the following points:

(a) The measures taken by the State party to comply with the Committee's Views to provide adequate compensation to the author for the legal costs incurred during domestic proceedings and the costs incurred in filing the present communication, in compliance with the obligation of States parties to act in good faith, both in their participation in the procedures under the Optional Protocol and in relation to the Convention itself;

(b) The measures taken to ensure the availability of existing accommodation and equipment to all persons with visual impairment for the tram network;

(c) The measures taken to guarantee that the reforms under way apply to persons with a visual impairment or other sensory impairment, in compliance with the Committee's Views.

Deadline for response: 23 January 2018.

Third reply from the State party:	Received on 20 January 2018.
Action taken:	State party's follow-up observations transmitted to the author for comments. Deadline: 23 February 2018.
Decision:	A reminder will be sent to the author. Follow-up action to be determined at the next session in view of the State party's reply and of the author's comments.

6. Communication No. 11/2013, *Beasley v. Australia*	
Views adopted:	1 April 2016
First reply from the State party:	Due on 25 October 2016. Received on 24 October 2016.
Action taken:	Acknowledgement to the State party and transmittal to the author on 28 October 2016, with a deadline for comments of 28 November 2016.
Reply of the author:	After two reminders, the author replied that he would provide his comments early in 2018.
Decision:	Follow-up ongoing. Awaiting author's comments.

7. Communication No. 13/2013, *Michael Lockrey v. Australia*	
Views adopted:	1 April 2016
First reply from the State party:	Due on 25 October 2016. Received on 24 October 2016.
Action taken:	Acknowledgement to the State party and transmittal to the author on 28 October 2016, with a deadline for comments of 28 November 2016.
Reply of the author:	After two reminders, the author replied that he would provide his comments early in 2018.
Decision:	Follow-up ongoing. Awaiting author's comments.